

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Jackson Analyst: Gloria McConnell Bill Number: AB 203

Related Bills: See Prior Analysis Telephone: 845-4336 Amended Date: 05-09-01

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Consumer's Financial Privacy Act

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended March 26, 2001.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

☒ PREVIOUS ANALYSIS OF BILL AS AMENDED March 26, 2001, STILL APPLIES.

☒ OTHER - See comments below.

## SUMMARY

Under this bill, a financial institution may not disclose, with certain exceptions, any personal information of a consumer without prior consent.

## SUMMARY OF AMENDMENTS

The May 9, 2001, amendments relate to insurance and securities transactions and do not affect FTB's programs or operations. Therefore, the department's previous analysis of the bill still applies.

The sections "Economic Impact," "Position," "Summary of Amendments," "Implementation Considerations," and "Technical Consideration" from the department's previous analysis are restated in this summary analysis for the convenience of the author.

## ECONOMIC IMPACT

### Revenue Estimate

As indicated in FTB's previous analysis, this bill could adversely affect the department's ability to collect income taxes, as well as nontax debt, including child support collection programs, for which it is responsible. The potential impact in any given year is unknown, but may be significant.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

06/20/01

## **POSITION**

Pending.

### **Summary of Suggested Amendments**

The amendments suggested in FTB's previous analysis still apply, and are attached. The amendments would:

- exempt the provisions of this bill for child support enforcement purposes and to the extent current law permits or requires disclosure to the FTB; and
- make a technical correction relating to the Legislature's findings and declarations.

## **IMPLEMENTATION CONSIDERATIONS**

### ***Personal Income Tax Law (PITL) Administration***

According to the author's office, this bill is not intended to preclude FTB from fulfilling its tax administration responsibilities. Therefore, the bill should be revised so that disclosure of financial and other personal information to FTB would be permissible, similar to the exemption provided for disclosure to law enforcement, but with respect to the provisions of the entire bill. The attached suggested Amendment 3 (subdivision (a)) would resolve this consideration and the following additional considerations:

- This bill broadly defines "consumer" and "personal information," and does not define "nonaffiliated third party." As such, this bill would apply to information of depositors, stockholders, and other persons for which information returns must be filed under current state and federal law by financial institutions and other third parties.
- This bill applies to other types of information that FTB is currently entitled to receive from financial institutions and third parties. This bill conflicts with the Right to Financial Privacy Act that allows FTB to request and receive information from financial institutions.
- Additionally, this bill conflicts with other state financial laws that allow FTB to request and receive any information necessary to administer the laws for which it is responsible. To implement this bill, the department's programs and operations may need to undergo major change and redesign.
- Under the provisions of this bill, a taxpayer could refuse disclosure consent and effectively delay or potentially restrain FTB's collection of tax activities.

## TECHNICAL CONSIDERATION

The bill implies that an individual has a constitutional right to privacy protections from business interests. By limiting the constitutional right statement to "business interests," the statement may be misleading. The attached Amendment 1 would strike out "by business interests."

### ***Child Support Collections***

The attached amendments would resolve the following two considerations:

- Because FTB's child support collection program uses FTB's tax information, the impact on the PITL program previously discussed above under "Implementation Considerations" related to PITL Administration would also reduce the effectiveness of FTB's child support collection program. The attached Amendment 3 (subdivision (a)) would resolve this consideration.
- In addition, to ensure that California's child support enforcement programs, as administered by the Department of Child Support Services, would continue unchanged, disclosure in connection with the child support enforcement programs should be exempted from the limitations of the bill in its entirety. The attached Amendments 2 and 3 (subdivision (b)) would resolve the consideration discussed in this subparagraph.

An unresolved question continues to arise under this bill when financial institutions use the alternative option to comply with FIDM. Under the alternative option, financial institutions send to FTB their records of all accountholders, regardless of whether they may owe child support. FTB then compares the financial institution's accountholder list with the list of child support obligors. Because this process includes the disclosure of account information of individuals with no child support obligations, the disclosure of their records may be viewed as being for other than child support enforcement purposes.

Therefore, the language in the bill could be interpreted to require financial institutions to obtain prior written consent from **each** of their customers before satisfying FIDM. Obtaining consent from all account holders could adversely impact banks that are currently using the alternative option to comply with FIDM.

## **LEGISLATIVE STAFF CONTACT**

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 203  
As Amended May 9, 2001

AMENDMENT 1

On page 2, line 14, strike out "by business interests"

AMENDMENT 2

On page 7, strike out lines 18 through 20, inclusive, and insert:

(7) The disclosure is made to a consumer reporting agency in

AMENDMENT 3

On page 8, after line 29, insert:

1798.79.4 The Consumers' Financial Privacy Act does not apply to any personal information, as defined in paragraph (6) of subdivision (a) of Section 1798.79.1, in the following circumstances:

(a) requested by or provided to the Franchise Tax Board to the extent otherwise specifically permitted or required by law.

(b) requested by or provided to a local, state, or federal agency for child support enforcement purposes.